THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.25977 of 2006

DATED: 18.12.2006

Between:

Smt.G.Bharathi Devi

…Petitioner

and

The Commissioner,
Municipal Corporation of Hyderabad,
Tankbund Road, Hyderabad.

…Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.25977 of 2006

ORDER:

On 15-12-2006, Sri Ghanta Rama Rao had taken notice representing the respondent and requested time to get instructions. Thus, the matter is coming up for admission today.

Heard Sri C.M.R.Velu, learned counsel for the writ petitioner and Sri Ghanta Rama Rao, learned counsel representing the respondent.

This writ petition is filed for Writ of Mandamus declaring the notice

issued by the respondent vide serial No.43 book No.55, under Section 461 of Hyderabad Municipal Corporation Act, 1955, dated 08.12.2006 as illegal, arbitrary, without jurisdiction and violative of Article 14, 21 and 300 A of the Constitution of India and consequently, direct the respondent not to interfere with the construction activities undertaken by the petitioner.

The said notice impugned reads as hereunder:

> "To
> Sir Smt.Bharathi Devi
> H.No.3-6-109/1/109/1 to 4, 109/7, Himayatnagar, Hyderabad.
>
> Whereas it is noticed that the erection/re-erection of the building/execution of the works as detailed below have been unlawfully commenced/is being unlawfully carried by you upon premises No.3-6-109/1, 109/1/1 to 4 and 109/7, Himayatnagar, Hyderabad
>
> You are hereby directed to stop the said construction work forthwith as the same is carried on without seeking permission as required U/S.428/contrary to the sanctioned plan/contrary to the provisions. Contained in Section 441, 442, 443, 444, 445, 446, 447 commenced after the expiry of the period of One year specified in Section 437 & 428 of the HMC Act 1955.
>
> 1.Stop further construction of R.C.C. pillars against the sanctioned plan P.No.106/91, dated 23/06/06.
>
> 2.You have also demolished the existing building in the rear side.
>
> Take notice that if the said work is not stopped forthwith, such steps as may be necessary to stop the said work shall be taken including the removal of yourself and agent with the help of Police from the said premises and prevent your entry upon the said premises. The costs any measure taken as above shall have to be paid you you.

Sd/-xxx
COMMISSIONER
Municipal Corporation of Hyderabad."

It is stated that the petitioner is the owner of the residential premises bearing No.3-6-109/1, 109/1/1 to 4 and 109/7 situated at Himayathnagar, Hyderabad. It is also stated that the building has been in existence at the site for about 50 years and during the months of July and August, 2006, the respondent had undertaken road widening programme and in such programme, 20 feet i.e., 66 square meters of the petitioner's house had been demolished. Earlier, the plot area was 175.95 square meters, now after the road widening, she is left with 110.61 square meters only.

It is also stated that after demolition in the road widening programme, the building of the petitioner developed cracks and the front elevation was totally defaced and they were unable to continue to reside in the said broken house. Hence, the petitioner made an application on 24.12.2005 to the respondent requesting permission for construction of the house in the remaining area and the respondent granted construction permission vide permit No.106/91, dated 23.06.2006. It is also stated that the petitioner could not add or alter the building without erecting three RCC pillars and further, due to demolition by the respondent, the rear side of the building also had collapsed and hence, she was left with no other way except to rebuild the rear portion and front portion by erecting six RCC pillars. It is also stated that the respondent had granted permission for additions and alterations in the said building.

Specific stand is taken by the writ petitioner that she had undertaken

the construction within the permit granted to her and she had not violated any building laws. Further, specific stand is taken that due to the demolition activity, which was carried on by the respondent, the necessity of constructing RCC pillars had arisen. Further, specific stand is taken that the present impugned action is initiated at the instance of one of the neighbours, who is aggrieved of non selling of the house to him by the petitioner. When the petitioner is proceeding with construction in accordance with the approved plan, and the construction of RCC pillars had been necessitated only due to demolition activity carried on by the respondent, it would be unjust and improper on the part of the respondent to issue present impugned notice. Hence, in the compelled circumstances as explained by the writ petitioner for having further support since there are cracks to the building due to demolition activity, six RCC pillars had been thought of by the petitioner apart from the other construction in accordance with the approved plan.

In view of the facts and circumstances, this Court is of the considered opinion that the Writ Petition be disposed of directing the respondent not to interfere with the construction activity of the petitioner relating to the subject matter of the Writ Petition in the light of the observations made supra. But however, it is made clear that, if any other further deviations are made to the approved plan, liberty is given to the respondent to proceed in accordance with law.

Accordingly, with the above observation, the writ petition is hereby allowed. No order as to costs.

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(P.S.NARAYANA,J)

18.12.2006.
Note: Furnish C.C. in two (02) days
B/o
vv/bsb